

United States
Court of Appeals
For the Ninth Circuit.

LEO WING ON and LEO WING WAH,
Appellants,
vs.

J. HOWARD McGRATH, Attorney General of
the United States,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California
Southern Division.

FILED

OCT 23 1953



No. 13969

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LEO WING ON and LEO WING WAH,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

SALVATORE C. J. FUSCO, ESQ.,

835 Clay St., San Francisco 8, Calif.,

For Appellant.

LLOYD H. BURKE, ESQ.,

United States Attorney;

CHARLES ELMER COLLETT, ESQ.,

Assistant United States Attorney,

San Francisco, California,

For Appellee.

In the District Court of the United States, Northern
District of California, Central Division

No. 31,316-Civil

LEO WING ON and LEO WING WAH,
Plaintiffs,

vs.

HERBERT BROWNELL, JR., Attorney General
of the United States,
Defendant.

EXCERPT FROM DOCKET ENTRIES

1952

Mar. 4—Filed petition for declaratory judgment—
issued 2 summons.

May 13—Filed answer of defendant.

Dec. 12—Filed notice by plttf. of motion to substi-
tute party deft. Dec. 29, 1952.

Dec. 12—Filed motion by plttf. to substitute party
deft.

Dec. 29—Ord. motion to substitute party deft.
cont'd to Jan. 12, 1953. (Harris.)

1953

Jan. 20—Filed order granting motion of plaintiff
to substitute party defendant. (Harris.)

Jan. 26—Filed notice and motion by deft. for re-
hearing Jan. 26, 1953.

Jan. 26—Ord. motion for rehearing cont'd to Jan.
27, 1953. (Harris.)

Jan. 27—Ord. motion for rehearing cont'd to Feb.
3, 1953. (Harris.)

1953

- Feb. 24—Filed ord. denying motion of deft. for reconsideration. (Harris.)
- Mar. 2—Ord. for trial May 12, 1953. (Harris.)
- Mar. 18—Filed notice and motion by plaintiff to substitute defendant March 23, 1953.
- Mar. 30—Filed order substituting Herbert Brownell, Jr., as defendant. (Murphy.)
- May 25—Filed notice and motion by defendant to dismiss, June 1, 1953.
- June 3—Filed order granting motion of defendant to dismiss. (Murphy.)
- June 9—Filed notice and motion by plttf. for rehearing, June 15, 1953, with supporting memo.
- June 17—Filed order denying motion for rehearing. (Murphy.)
- July 14—Filed notice and motion by plaintiff to set for trial, July 20, 1953, with certificate of readiness and memo. in support.
- July 20—Ordered, motion to set for trial denied. (Carter.)
- July 22—Filed notice of appeal.
- July 22—Filed designation of record on appeal.
- July 22—Filed appeal bond in sum of \$250.00.

In the District Court of the United States, Northern
District of California, Central Division

No. 31,316

LEO WING ON and LEO WING WAH,
Plaintiffs,

vs.

J. HOWARD McGRATH, Attorney General of
the United States, Washington, D. C.,
Defendant.

COMPLAINT

Comes now the plaintiffs in the above-entitled action, and for their cause of action against the defendant herein, alleges as follows:

I.

That the defendant herein above named is and has been at all times herein mentioned the Attorney General of the United States at Washington, D. C., and as such is the head of the United States Department of Justice.

II.

That plaintiffs have been, and at all times herein stated, are still being held in restraint and being denied their liberty by the defendant in that the plaintiffs are confined to the Immigration Detention Quarters at San Pedro, California, and further that the defendant has ordered the plaintiffs to be deported from the United States as aliens.

III.

That the plaintiffs' father, Lee Chee Ting, is a

citizen and national of the United States and is now a resident of the City and County of San Francisco, California, and further that the plaintiff Leo Wing On was born on March 1, 1929, in the City of Canton, China; and that the plaintiff Leo Wing Wah was born on September 15, 1932, in the City of Canton, China; and that both of the plaintiffs herein are the natural and legitimate sons of the above-named Lee Chee Ting and further that the plaintiffs are citizens and nationals of the United States by virtue of the provisions of Revised Statutes 1993, as amended, and further that the plaintiffs are residents of the City and County of San Francisco, State of California, but are presently residing in the City of San Pedro, County of Los Angeles, California.

IV.

That plaintiffs claim a right and privilege as nationals and citizens of the United States and further claim the attending rights and privileges to enter and remain in the United States and to enjoy all pertinent rights and privileges therein, and further that plaintiff alleges that defendant herein named has denied and still continues to deny said rights and privileges to the plaintiffs and that the executory officials of the Department of said defendant have denied and continue to deny the plaintiffs such rights and privileges as nationals and citizens upon the grounds that the plaintiffs herein named are not nationals and citizens of the United States.

V.

That the plaintiffs have prosecuted this action pursuant to provisions of Section 503 of the Nationality Act of 1940 for a judgment declaring the plaintiffs to be nationals of the United States.

Wherefore, plaintiffs pray:

1. That the defendant herein or other proper representatives, agents or officials of the United States government be requested to appear and answer this complaint.

2. That a time and date be set for hearing the evidence to be adduced on behalf of plaintiffs and their witnesses.

3. That pending the hearing and determination of this action, the plaintiffs be released from the custody of the Immigration and Naturalization Service and of the defendant and that plaintiffs be allowed to remain in the custody of their father herein named under reasonable bond.

4. For a judgment of this Honorable Court declaring the plaintiffs to be nationals of the United States.

5. For such other and further relief as may be meet and just in the premises.

(Chinese signature)

LEO WING ON,

(Chinese signature)

LEO WING WAH.

/s/ SALVATORE C. J. FUSCO,

Attorney for Plaintiffs.

State of California,
County of Los Angeles—ss.

Leo Wing On and Leo Wing Wah, being first duly sworn, each depose and say:

That they are the plaintiffs named in the foregoing Complaint; that they have read said complaint and know the contents thereof; that the same is true of their own knowledge except as to the matters which are therein stated on information and belief and as to those matters they believe it to be true.

(Chinese signature)

LEO WING ON,

(Chinese signature)

LEO WING WAH.

Subscribed and sworn to before me this 4th day of March, 1952.

[Seal] /s/ CRICHTON K. LEONG,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires June 9, 1952.

[Endorsed]: Filed March 4, 1952.

[Title of District Court and Cause.]

ANSWER

Comes Now J. Howard McGrath, Attorney General of the United States of America, defendant in the above-entitled action, by and through his attorneys, Chauncey Tramutolo, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiffs' complaint admits, denies, and alleges as follows:

I.

Answering Paragraph I of the Complaint, defendant admits the allegations contained therein.

II.

Answering Paragraph II of the Complaint, defendant admits that the plaintiffs were detained by the Immigration and Naturalization Service, Department of Justice, at the Port of San Francisco, restrained from entering the United States, and are at present detained at the Immigration Detention Quarters, at San Pedro, California. Defendant further admits that the plaintiffs have been ordered returned to the country from whence they came.

III.

Answering Paragraph III of the Complaint, defendant denies the allegations contained therein and specifically denies as follows: That Lee Chee Ting is the blood father of the plaintiffs, but admits that one Lee Chee Ting has been recognized as a citizen

and national of the United States and resides in the City and County of San Francisco, California. Denies the plaintiff, Leo Wing On, was born on March 1, 1929, in the City of Canton, China, and that plaintiff, Leo Wing Wah, was born on September 15, 1932, in the City of Canton, China. Denies that the plaintiffs are the natural and legitimate sons of Lee Chee Ting; denies that plaintiffs are citizens of the United States by reason of Section 1993 of the revised Statutes of the United States as amended, or under any other statute, and affirmatively asserts that the plaintiffs are not now and never have been citizens of the United States. Defendant further denies that the plaintiffs are presently residing in the City of San Pedro, County of Los Angeles, California, and affirmatively asserts that plaintiffs have no lawful domicile in the State of California, or elsewhere in the United States.

IV.

Answering Paragraph IV of the Complaint, defendant admits that the plaintiffs have been denied the rights and privileges to enter and remain in the United States and to enjoy all pertinent rights and privileges therein, but affirmatively alleges plaintiffs have no rights or privileges as nationals of the United States, as they are not now and never have been citizens of the United States, but are in fact aliens.

V.

Answering Paragraph V of the Complaint, defendant denies the allegations contained in Para-

graph V and affirmatively alleges that the plaintiffs do not have a cause of action against the defendant, pursuant to the provisions of Section 503 of the Nationality Act of 1940 as amended.

Wherefore, defendant prays that the Complaint herein be dismissed; that the relief prayed for be denied; and that defendant recover from plaintiffs his proper costs herein.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ EDGAR R. BONSALE,
Assistant U. S. Attorney,
Attorneys for Defendant.

[Endorsed]: Filed May 13, 1952.

[Title of District Court and Cause.]

SUPPLEMENTAL PLEADING AND MOTION
TO SUBSTITUTE PARTY DEFENDANT
UNDER RULE 25 (d) R.C.P.

Plaintiffs, Leo Wing On and Leo Wing Wah, pursuant to the provision of Rule 25 (d) of the Federal Rules of Procedure, in the above-entitled cause of action move this Court for an order substituting James P. McGranery as Attorney General of the United States as a party defendant herein in his said representative capacity in the place and stead of his predecessor in said public office, J. Howard McGrath, who during his period of

office was named as party defendant in his representative capacity as Attorney General of the United States and further in order to show to the satisfaction of this Court that there is a substantial need for the continuance and maintenance of this action against the said defendant and his agents under his authority against whom this proceeding was instituted the plaintiffs herein set forth and allege as follows:

1. James P. McGranery heretofore was appointed Attorney General of the United States and on May 27, 1952, took oath of office as Attorney General of the United States and thereupon commenced the performance of his duties as such public officer and since then holds and at present does hold said public office; is the successor in said public office to his predecessor, J. Howard McGrath, who has been named as party defendant in the above-entitled action and that James P. McGranery as Attorney General of the United States is a real party in interest and a necessary and indispensable party defendant in this cause of action as provided for by Code Section 503 of the Nationality Act of 1940.

Wherefore, plaintiffs pray for an order of this Court substituting James P. McGranery in his representative capacity as Attorney General of the United States in the place and stead of his predecessor, J. Howard McGrath, in that said capacity.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

[Endorsed]: Filed December 12, 1952.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO SUB-
STITUTE PARTY DEFENDANT

Plaintiffs have moved the Court for substitution of now Attorney General James P. McGranery, successor to J. Howard McGrath. Defendant contends that plaintiffs have not filed timely, in accordance with the requirements of Federal Rules of Civil Procedure 25 (d) and that the cause of action must be declared abated.

In an action against a federal official in which plaintiff seeks to compel such official to discharge his duties, the action abates when the official dies or retires from office. But the instant action seeks declaratory relief, namely, a finding of nationality statuts of plaintiffs. Thus the language of Judge Goodman in *Ly Moon and Ly Sue Ning v. Acheson*, Nos. 30159, 31161, is applicable: “* * * despite the fact that the Secretary of State (in this instance Attorney General) is party defendant, in every sense the people of the United States (the United States of America) are defendants.”

The Attorney General is named as the representative of the United States government. Substitution of party defendants is one of form and not of substance.

Accordingly, It Is Ordered that the motion to

substitute party defendant be, and the same hereby is, Granted.

Dated: January 19, 1953.

/s/ GEORGE B. HARRIS,
United States District Judge.

Defense Corp. v. Lawrence Co.,
336 U.S. 631.

[Endorsed]: Filed January 20, 1953.

[Title of District Court and Cause.]

MOTION FOR REHEARING

On January 19, 1953, this Court ordered that the motion of plaintiffs to substitute former Attorney General James P. McGranery, successor to J. Howard McGrath, as party defendant herein, be granted. In its order the Court relied on the language found at page 5 in the opinion of Judge Louis E. Goodman dated January 12, 1953, in the cases of *Ly Shew vs. Acheson*, Civil Nos. 30159 and 31161, and further relied on the case of *Defense Corp. v. Lawrence Co.*, 336 U.S. 631.

Now comes the defendant and moves for rehearing on the following grounds:

1. Congress of the United States has by statute, 8 U.S.C. 903, permitting the filing of the above suit.
2. Rule 25 (d) of Federal Rules of Civil Procedure specifically provides the time and manner in

which substitution of parties may be made, and Rule 6 (b) does not permit an extension of time.

3. The Supreme Court of the United States in *Snyder v. Buck*, 340 U.S. 15, held in a parallel matter that an action abated for failure to substitute defendant within the prescribed period.

4. This Court, in the case of *Toshio Joji*, Civil No. 27557, granted on April 26, 1951, a motion to dismiss for failure to substitute the Attorney General of the United States as defendant in place of the Alien Property Custodian, pursuant to the provisions of Rule 25 (d), Federal Rules of Civil Procedure.

5. The United States of America has not consented to be sued in such an action as is alleged in plaintiffs' complaint.

Dated: January 23, 1953.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

NOTICE OF MOTION

To Plaintiffs Above Named and Salvatore C. J. Fusco, 538 Front Street, San Francisco, California, His Attorney:

Please Take Notice that the undersigned will bring the attached Motion for Rehearing on for hearing before the above-entitled Court, at Room 276, Post Office Building, 7th and Mission Streets,

City and County of San Francisco, California, on the 26th day of January, 1953, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 26, 1953.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR RECONSIDERATION

The Court previously made its order granting plaintiffs' motion to substitute party defendant. Thereafter defendant moved the Court to reconsider its ruling. The Court heard arguments and reviewed the authorities, including those submitted in the like case of *Lew Sheck Shan, et al., v. McGrath*, No. 30127.

The Court now being fully advised, It Is Ordered that defendant's motion for reconsideration be, and the same hereby is, Denied.

It Is Further Ordered that plaintiffs' motion to substitute party defendant be, and the same hereby is, Confirmed.

Dated: February 24, 1953.

/s/ GEORGE B. HARRIS,
United States District Judge.

Fleming v. Goodwin,
165 F. 2d 334;

Fleming v. People's Natural Gas Co.,
8 F.R.D. 42;

F.R.C.P. 6 (b).

[Endorsed]: Filed February 24, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION

To the Defendant Above Named and the United States Attorney, C. Tramutolo, and Edgar R. Bonsall, Assistant United States Attorney, Post Office Building, San Francisco, California, and His Attorney:

Please take notice that on Monday, March 23, 1953, at the hour of 9:30 a.m. or as soon thereafter as the matter can be heard in the Law and Motion Department, United States District Court, Post Office Building, Seventh and Mission Streets, San Francisco, the attorney for the plaintiff will present a motion for substitution of party defendant.

The copy of this motion is attached herewith and made a part thereof.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION OF
PARTY DEFENDANT

Comes now the Plaintiff in the above-entitled action by and through counsel of record and moves this Court for an order substituting Herbert Brownell, Jr., as Attorney General of the United States in the place and stead of the defendant, James P. McGranery, as Attorney General.

Said motion being filed pursuant to the provision of Rule 25 of the Federal Rule of Civil Procedure.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 18, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF SALVATORE C. J. FUSCO
IN SUPPORT OF MOTION TO SUBSTI-
TUTE PARTY DEFENDANT

Salvatore C. J. Fusco, being first duly sworn, deposes and says:

1. He is the attorney for the plaintiffs in the above-entitled action and that James P. McGranery, defendant in the above-entitled action, resigned from his office as Attorney General, and that Her-

bert Brownell, Jr., was duly appointed as Attorney General in the place and stead of the defendant, James P. McGranery, on or about January 21, 1953, and that Herbert Brownell, Jr., has entered upon the duties of said office on or about January 21, 1953, and as such holds said office.

2. There is substantial need for continuing and maintaining said cause of action and obtaining adjudication of the question involved for the reason that the executing official of the Department of State has refused to recognize said plaintiffs' claim of United States nationality.

3. Your affiant is informed and on such information and belief states that Herbert Brownell, Jr., as Attorney General by and through his subordinate official will continue to deny the said plaintiffs' claim of United States nationality.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

Subscribed and sworn to before me this 16th day of March, 1953.

[Seal] /s/ JAMES R. HUNT,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires Jan. 27, 1957.

[Endorsed]: Filed March 18, 1953.

[Title of District Court and Cause.]

ORDER SUBSTITUTING PARTY
DEFENDANT

The motion for substitution of party defendant in this cause coming on to be heard before the Court, and the Court being fully advised in the premises, and it appears that the defendant, James P. McGranery, Attorney General of the United States, has been replaced by Herbert Brownell, Jr., as Attorney General, it is by this Court the 30th day of March, 1953, hereby ordered that Herbert Brownell, Jr., as Attorney General, be and he is hereby substituted as party defendant in this cause in the place and stead of James P. McGranery, as Attorney General.

/s/ EDWARD P. MURPHY,
Judge of the District Court.

[Endorsed]: Filed March 30, 1953.

[Title of District Court and Cause.]

DEFENDANT'S MOTION TO DISMISS
COMPLAINT

Comes Now the defendant and moves the Court for a dismissal on the following grounds:

1. The Court lacks jurisdiction over the subject matter, in that the action has abated;
2. The Court lacks jurisdiction over the person

of Herbert Brownell, Jr., Attorney General of the United States.

Wherefore, defendant prays that the complaint on file in the above action be dismissed.

/s/ LLOYD H. BURKE,

United States Attorney;

By /s/ CHARLES ELMER COLLETT,

Assistant U. S. Attorney,

Attorneys for Defendant.

NOTICE OF MOTION TO DISMISS
COMPLAINT

To Plaintiffs Above Named, and to Salvatore C. J. Fusco, Esq., 835 Clay Street, San Francisco, California, Their Attorney:

Please Take Notice that on Monday, June 1, 1953, at the hour of 10:00 a.m., or as soon thereafter as the matter can be heard in the Law and Motion Department, United States District Court, 7th and Mission Streets, San Francisco, California, the counsel for defendant will bring the attached Motion to Dismiss the Complaint on for hearing before the above-mentioned Court.

/s/ LLOYD H. BURKE,

United States Attorney;

By /s/ CHARLES ELMER COLLETT,

Assistant U. S. Attorney,

Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 25, 1953.

In the United States District Court for the Northern
District of California, Southern Division

No. 31,316

LEO WING ON and LEO WING WAH,
Plaintiffs,

vs.

HERBERT BROWNELL, JR., Attorney General
of the United States, Washington, D. C.,
Defendant.

ORDER

Defendant's motion to dismiss has come on regularly for hearing and has been submitted.

On January 19, 1953, this Court, per Harris, J., granted plaintiffs' motion to substitute the Honorable James P. McGranery for the Honorable J. Howard McGrath as the party defendant even though more than six months had elapsed between Mr. McGrath's leaving office and the date of plaintiffs' motion. Thereafter, on March 30, 1953, upon plaintiffs' timely motion, I ordered the substitution of the Honorable Herbert Brownell, Jr., for the Honorable James P. McGranery as party defendant.

The six months' period during which a motion for substitution may be filed is jurisdictional. Rule 25 (d), F.R.C.P.; *Snyder v. Buck*, 340 U.S. 15 (1950). Accordingly, the order of this Court entered in this cause on January 19, 1953, is hereby vacated. As Mr. McGranery was never properly a

defendant in this cause, the order of this Court entered on March 30, 1953, is also vacated. Defendant's motion to dismiss is granted and the complaint is dismissed. *Bowles v. Wilke*, 175 F. 2d 35 (7th Cir., 1949).

So Ordered.

Dated: June 3, 1953.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed June 3, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION

To the Defendant Above Named and the United States Attorney, Lloyd H. Burke, and Edgar R. Bonsall, Assistant United States Attorney, Post Office Building, San Francisco, California, and His Attorney:

Please take notice that on Monday, 15 June, 1953, at the hour of 9:30 a.m. or as soon thereafter as the matter can be heard, in the Law and Motion Department, United States District Court, Post Office Building, Seventh and Mission Streets, San Francisco, the attorneys for the plaintiffs will present a motion for rehearing.

The copy of this motion is attached herewith and made a part thereof.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

[Title of District Court and Cause.]

MOTION FOR REHEARING

On February 24, 1953, the Honorable Judge George B. Harris granted plaintiffs' motion to substitute Herbert Brownell, Jr., for J. Howard McGrath as party defendant in the above-entitled action.

On June 2, 1953, this Honorable Court vacated the above order granting the plaintiffs' motion of substitution and granted defendant's motion to dismiss the complaint. In its order the Court relied on Rule 25(d) F.R.C.P., *Snyder vs. Buck*, 340 U. S. 15, and *Bowles vs. Wilke*, 175 F. 2d 35.

Now come the plaintiffs and move this Honorable Court for rehearing on the following grounds:

I.

Congress of the United States has by statute, 8 U.S.C. 903, permitted the filing of the above suit.

II.

The language of the Court in the case of *Fleming vs. Goodwin*, 165 F. 2d, 334 clearly explains the purpose of Section 25(d) of the Federal Rules of Civil Procedure, as applicable to actions which are

of such a nature that they will abate on separation of the offices involved from office.

III.

The nature of the case in the above action is one that does not come within the purview of 25(d) and does not abate upon the separation of J. Howard McGrath, in his nominal capacity, as Attorney General, as in contra distinction to the case of *Snyder vs. Buck*, 340 U.S. 15, calling for a duty highly personal in nature required of the defendant.

IV.

The case of *Ishikawa vs. Acheson*, Secretary of State, 90 F. Supp. 713 held that an action against the Secretary of State in his official capacity for declaratory judgment as to plaintiff's citizenship was a suit against the United States, and further held that the doctrine of laches is not applicable against the United States whether the United States is the party plaintiff or in the position of a defendant.

Federal Rules of Civil Procedure made for the conduct of private litigation should not apply and bar a full disclosure of a matter of prime importance to both the plaintiffs and the United States.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed June 9, 1953.

[Title of District Court and Cause.]

ORDER

Plaintiffs' motion for reconsideration of the Court's order hereinbefore entered in this cause on June 3, 1953, has come on regularly for hearing and has been submitted.

After listening to counsel's argument and perusing his authorities, the Court sees no reason to vacate or modify its prior ruling.

So Ordered.

Dated: June 16, 1953.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed June 17, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that on this 22nd day of July, 1953, plaintiffs hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order of this Court dated on the 3rd day of June, 1953, in favor of defendant and against said plaintiffs.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

[Endorsed]: Filed July 22, 1953.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas, the plaintiff has appealed to the United States Court of Appeals, for the Ninth Circuit from the order of this court entered June 3, 1953.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does undertake and promises on the part of the plaintiffs, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, he above-entitled Court, may upon notice to the Surety of not less than ten (10) days proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of rule 34 of the Rule

of Practice of the United States District Court in and for the Northern District of California.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 22nd day of July, 1953.

[Seal] MARYLAND CASUALTY
COMPANY,

By /s/ W. G. KELSO,
Attorney-in-fact.

State of California,
City and County of San Francisco—ss.

On this 22nd day of July, 1953, before me, A. McClintock, a Notary Public in and for the City and County of San Francisco, personally appeared W. G. Kelso, known to me to be the Attorney-in-Fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my Office in the City and County of San Francisco the day and year in this Certificate first above written.

[Seal] /s/ A. McCLINTOCK,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires January 12th, 1957.

[Endorsed]: Filed July 22, 1953.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in the above-entitled case, and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Docket entries.

Complaint.

Answer.

Supplemental pleading and motion to substitute party defendant under rule 25(d) F.R.C.P.

Order granting motion to substitute McGranery for McGrath as party defendant.

Motion for rehearing.

Order denying motion for reconsideration.

Notice of motion and motion for substitution of party defendant.

Affidavit of Salvatore C. J. Fusco in support of motion to substitute party defendant.

Order substituting Brownell, Jr., for McGranery as party defendant.

Defendant's motion to dismiss complaint and Memo of points and authorities in support thereof.

Order granting defendant's motion to dismiss and vacating order of this Court of January 19, 1953.

Notice of motion and motion for rehearing with memo of points and authorities in support thereof.

Order denying plaintiff's motion for reconsideration.

Notice of Appeal.

Bond for costs on appeal.

Designation of record on appeal.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 12th day of Aug., 1953.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13969. United States Court of Appeals for the Ninth Circuit. Leo Wing On and Leo Wing Wah, Appellants, vs. J. Howard McGrath, Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 12, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for
the Ninth Circuit

No. 13969

LEO WING ON and LEO WING WAH,
Plaintiffs,
vs.

HERBERT BROWNELL, JR., Attorney General
of the United States, Washington, D. C.,
Defendant.

STATEMENT OF POINTS

Plaintiff sets forth the following points on which he intends to rely on this appeal:

1. The court below erred in holding that the appellants' cause of action abated.
2. The court below erred in holding that the appellants' right of action abated.
3. The court below erred in vacating the order of a court of parallel jurisdiction.

Respectfully submitted,

/s/ SALVATORE C. J. FUSCO,
Attorney for Appellants.

Service of copy acknowledged.

[Endorsed]: Filed September 3, 1953.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes Now, the appellant by his attorney, Salvatore C. J. Fusco, in the above-named matter, hereby designates the entire record to be included in the transcript of record on appeal which is being considered necessary for the determination of the points on which he intends to rely on appeal.

Respectfully submitted,

/s/ SALVATORE C. J. FUSCO,
Attorney for Appellants.

Service of copy acknowledged.

[Endorsed]: Filed September 3, 1953.